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tive, and the other in the negative. The former however, was expressed with more confidence. The latter not being unqualified.

The preponderance of evidence is in favor of the assertion that the curative process had not gone so far in twenty-six or even thirty days from the accident, but that the distortion could have been remedied by surgical skill. This, however, is doubtful. It is also uncertain what degree of surgical skill could have been found at St. Helena. These doubts would have been prevented if the master had performed his duty. By going into that port it would have been ascertained what could be accomplished. Still I cannot give to the libelant the same measure of damages as if it were certain that the whole permanent injury arose from the master's default. I must make a considerable deduction by reason of the uncertainty that remains in this respect. What the libelant has certainly lost is the chance or probability of a remedy or cure, more or less complete, by being carried into St. Helena. And for this loss, as well as for what he has suffered on the minor grounds of complaint, he is entitled to a full indemnity.

Decree for \$600 and costs.

From this decree the respondent appealed.

In the Police Court of Boston, Massachusetts—April, 1859.

COMMONWEALTH, ON COMPLAINT OF WALL vs. M'LAURIN F. COOKE.

1. The regulation of the School Committee of Boston, which requires that pupils in the public schools shall, among other things, "learn the Ten Commandments, and repeat them once a week," is not a violation of the constitutional provision which secures to the citizen liberty of conscience and of worship.
2. A teacher in the public schools has a right to enforce that regulation, by the corporal chastisement of a child refusing to repeat the Ten Commandments, though that refusal proceeds from a conscientious objection on the part of the child to the particular version of the Bible used, and is made by the direction and under the authority of his father.
3. The authority of a parent cannot justify the disobedience, by a child, of the regulations of a school.

4. A teacher in the public schools is not liable, criminally, for the infliction of corporal punishment in school, if in severity it does not exceed the nature and magnitude of the offence, and is not inflicted in haste or with malice.

The opinion of the court, in which the facts fully appear, was delivered by

MAINE, J.—The complaint in this case was made on the 16th day of March last, and charges that “ McLaurin F. Cooke, teacher, on the 14th day of March, 1859, committed an assault and battery on Thomas J. Wall, son of the complainant, under circumstances of aggravation ; that Thomas was eleven years of age, a pupil in the Eliot School, and defendant a teacher, and that defendant struck, beat and wounded Thomas with a stick for the space of thirty minutes, inflicting serious wounds.”

Upon this complaint a warrant was issued by order of court, the defendant Cooke arrested, and in open court pleaded not guilty to the complaint.

Upon this issue, evidence was introduced on the part of the Commonwealth to prove the assault, and by the defendant explanatory of the matter, and from the evidence so introduced, the following facts appeared :

That the defendant was the first Assistant Teacher in the Eliot School, Samuel W. Mason, Principal ; that Thomas J. Wall was a scholar in said school, and had been for six or seven years last past. That during his attendance the Bible in the common English version was read in the school, and that the scholars sufficiently advanced were required to read or commit to memory the Lord’s Prayer and the Ten Commandments.

That by the rules and regulations of the school, the Commandments were repeated by the scholars every Monday morning, and that the boy Wall had repeated them without objection until Monday, March the 7th, when he refused, and was discharged from the school. That an interview was had between the father of the boy and the Principal of the school, and the boy returned to the school.

That on Monday, the 14th of March, he refused again to read or repeat the Commandments, giving as reasons for so doing, that his

father had agreed with Mr. Mason that he should not say them. That his father had told him for his life not to say them, and that his priest had also told him not to say them, and that on the Sunday previous to the 14th the priest (Father Wiget,) while addressing nine hundred children of St. Mary's Church, of whom Wall was one, told them not to be cowards to their religion, and not to read or repeat the Commandments in school, that if they did he would read their names from the altar.

That Wall came to the school on Monday with the determination not to read or repeat them.

That before the 14th, Father Wiget had promised to give him a medal, *blessed*, and that since the 14th he had given it to him; that he had given them to other boys, and he knew no reason for his giving it to him; that Father Wiget said at the time he was a good boy.

It further appeared, from the evidence, that there was a concerted plan of action on Monday, the 14th, between many of the boys to refuse to obey the orders of the school, if required to read or repeat the Lord's Prayer or the Commandments, and that two-thirds of the scholars composing the school where Wall attended, and numbering about sixty, declared their intention not to comply with the rules of the school in that particular. And from all the evidence it was manifest that Wall was one of, if not the principal actor. He refused to repeat the Commandments for the reasons given. He was told by Mr. Mason that his father had requested him to make him repeat them, and that if he did not, to punish him severely. Wall still refusing, was punished by the defendant with a rattan stick, some three feet in length, and three-eighths of an inch thick, by whipping upon his hands. From the time when the punishment commenced to the time when it ended, repeated inquiries were made of Wall if he would comply with the requirements of the school. Some thirty minutes' time was occupied in the whole. During this time there were several intervals, at two of which the defendant was absent from the room some little time. The blows were not given in quick succession, but with deliberation. During the

chastisement Wall was encouraged by others, who told him not to give up. This was while defendant was absent from the room. The master ceased to punish, when Wall submitted to the requirements of the school.

From the effect of the punishment Wall's hands were swollen, he was taken to the sink by the defendant twice, and his hands held in water. The physician who saw his hands in the afternoon of Monday, and prescribed for them, after describing their appearance, says that he did not think the injury very severe ; that at the time he thought he would recover from it in twenty-four hours.

Now, was the punishment so inflicted without justification, and in violation of the constitutional rights of Wall ? and was the punishment excessive ? Before considering the constitutional rights of the pupil while in school, it may be proper to see by what right or authority the schools themselves exist.

The constitution recognizes the existence of schools, and declares that "all moneys raised by taxation in the towns and cities for the support of public schools, and all moneys that may be appropriated by the State for the support of common schools, shall be applied to and expended to no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended ; and such moneys shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools." The schools recognized by the constitution are those which are to be conducted according to law, under the order and superintendence of the authorities of the town or city where the moneys are to be expended.

The statutes by which our schools are established and governed, provide "that it shall be the duty of the President, Professors, and Tutors of the University at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other

virtues which are the ornaments of human society, and the basis upon which a republican constitution is founded."

By statute it is also provided, "that the School Committee of each town and city in the Commonwealth, shall require *the daily reading of some portion of the Bible in the common English version*, and shall direct what other books shall be used in the public schools."

The School Committee for the city of Boston, in their published regulations, direct and recommend as follows:—

"The morning exercises of all the schools shall commence with reading a portion of the Scripture in each room by the teachers, and the Board recommend that the reading be followed with the Lord's Prayer repeated by the teacher alone, or chanted by the teacher and the children in concert, and that the afternoon session close with appropriate singing, and *also that the pupils learn the Ten Commandments, and repeat them once a week.*"

Do these laws and regulations, when carried out, conflict with the constitutional rights of any pupil? It is claimed that they do, and the constitution is cited, or that portion of it supposed to apply to the case, which is as follows:—

"That it is the right as well as the duty of all men in society publicly and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeably to the dictates of his own conscience, or for his religious professions or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship."

Can the position assumed be a correct one? Our schools are the granite foundation on which our republican form of government rests. They were created and are now sustained by our constitution and laws, and the almost unanimous voice of the people. But a pupil in one of them has religious scruples of conscience, and cannot read or repeat the Commandments, unless from that version of the Bible which his parent may approve. Now what is to be done in such a case? If he has a constitutional right to refuse to read or to repeat them from books furnished for the

school by statute law, then to punish him in any way would be a great wrong. He could not be expelled from school for standing upon his constitutional rights. Neither could he be punished by corporal punishment; and if the plea of conscience and his constitutional rights would protect him from reading the Bible, is it not equally clear that he could not be compelled to hear it read?

If, then, these are constitutional rights, secured to the children in our common schools, at any time when one pupil can be found in each public school in the Commonwealth with conscientious scruples against reading the Bible, or hearing it read, the Bible may be banished from them, and so the matter of education may be taken from the State government and placed in the hands of a few children.

Not Roman Catholic children alone. For if the plea of conscience is good for one form of sectarian religion, it is good for another. The child of a Protestant may say, "I am a conscientious believer in the doctrine of universal salvation. There are portions of the Bible read in school which it is claimed by others tend to prove a different doctrine; my conscience will not allow me to hear it read, or to read it." Another objects as a believer in baptism by sprinkling. "There are passages in the Bible which are believed by some to teach a different doctrine. I cannot read it, conscience is in the way." Still another objects as a believer in one God. "The Bible, it is claimed by some, teaches a different doctrine; my conscience will not allow me to read it or to hear it read." And so, every denomination may object for conscience sake, and war upon the Bible and its use in common schools.

Those who drafted and adopted our constitution, could never have intended it to meet such narrow and sectarian views. That section of the constitution was clearly intended for higher and nobler purposes. It was for the protection of all religions—the Buddhist and the Brahmin, the Pagan and the Jew, the Christian and the Turk, that all might enjoy an unrestricted liberty in their religion, and feel an assurance that for their religion alone, they should never, by legislative enactments, be subjected to fines, cast into prisons, starved in dungeons, burned at the stake, or made to feel the power of the inquisition.

It was intended to prevent persecution by punishing for religious opinions. The Bible has long been in our common schools. It was placed there by our fathers, not for the purpose of teaching sectarian religion, but a knowledge of God and of his will, whose practice is religion. It was placed there as the book best adapted from which to "teach children and youth the principles of piety, justice, and a sacred regard to truth, love to their country, humanity, and a universal benevolence, sobriety, moderation and temperance, and those other virtues which are the ornaments of human society, and the basis upon which a republican constitution is founded."

But, in doing this, no scholar is requested to believe it, none to receive it as the only true version of the laws of God. The teacher enters into no argument to prove its correctness, and gives no instructions in theology from it. To read the Bible in school for these and like purposes, or to require it to be read without sectarian explanations, is no interference with religious liberty.

If the plea of conscience is good against the reading or use of the Bible, why is it not equally good against any other book, or the language in which the book may be printed?

The Jew, for conscience sake, will only read the Scriptures from the Torah,¹ and why may not the pupils in our schools refuse to read the Bible, until they are sufficiently learned to read it in the original Hebrew? If tender consciences may rightfully claim such unlimited power, what constitutional injustice is daily done in our courts of law, by swearing the Protestant by the uplifted hand, the Roman Catholic upon the Evangelists, the Jew upon the Pentateuch, while facing the East, with his head covered, and refusing to admit the Infidel as a witness at all!

There is another part of the case, which should here be considered. It is the argument, that in disobeying the commands of the school, Wall was acting under the lawful authority of his father.

Can the authority of the parent, and that of the teacher, over the pupil, exist at the same time, in and during the hours of school? That school approaches nearest to perfection that most resembles

¹ Parchments upon which are written in Hebrew the laws of Moses.

a well governed family, where nothing is required excepting that which is believed to be for the best interests of every member, and where all requirements are obeyed, and where all are subject to one head. If "a house be divided against itself, that house cannot stand;" so will it ever be with our schools, if the authority of the master and that of the parent enter the school-room together. The master is there by authority of law. He is also there by the implied authority and consent of the parent, who sends his child to him for instruction, knowing at the same time the duties of both master and pupil. By sending his child to school he surrenders so much of his parental rights over the child as would, if exercised, conflict with the reasonable rules and regulations of the school. If this is not so, why may not the parent command his child while in school to read from one book and to reject another. And what are the rights and what the authority of the master in such a case? What becomes of the power of the School Committee, whose business it is to direct what books shall be used in the public schools?

From the argument it is understood that in this case there are conflicting rights, the rights of conscience of the scholar, the rights of the parent over him, and the rights of the defendant as master, and that these rights are to be upheld by compromises. What the compromise is to be, the court is not informed. Can it be that those pupils whose *religion* teaches them that the Douay version of the Bible is the only true record of the Scriptures, shall be permitted to read and repeat the Lord's Prayer and the Ten Commandments from their own Bible? Grant the request, and what follows?

It is enacted by the statute "that the School Committee shall never direct to be purchased or used in any of the town schools any school books which are calculated to favor the tenets of any particular sect of Christians." So by such a compromise, we see the very thing would be done which is now complained of, that of favoring the tenets of a particular religion.

Is the compromise to be that of a division of the school moneys, allowing separate schools to be carried on in accordance with *religious*

views? Our Constitution declares that *no money raised by taxation for the support of schools shall ever be appropriated to any religious sect for the maintenance, exclusively, of its own schools.*

The last point for the consideration of the court is, was the offence one which required punishment? Had the master the right to inflict corporal punishment? and, if he had, was the punishment excessive, or inflicted through malice? The apparent magnitude of the offence depends somewhat upon the stand-point from which it is viewed. From one aspect, it appears to be of the most innocent and simple nature. A child desired the privilege in school of reading the Commandments from *his* Bible, *the only one that his religion would allow him to read.* It would seem to a generous mind tyrannical, to deny so simple and innocent a request; and it would indeed be so, were that the whole of the matter.

That most wonderful specimen of human skill and human invention, the Suspension Bridge, that spans the dark, deep waters at Niagara, with strength to support the heaviest engines with cars laden with their freight, and defying the whirlwind and the tempest, is but the perfection of strength from the most feeble beginning. A tiny thread was but safely secured across the abyss, and final success became certain. Thread after thread were interchanged, until iron cables bound opposite shores together. May not the innocent pleading of a little child for its *religion in school*, if granted, be used like a silken thread, to first pass that heretofore impassable gulf which lies between *Church and State*, and when once secured, may not stronger cords be passed over it, until cables, which human hands cannot sever, shall have bound *Church and State together forever?*

As for the right of inflicting punishment in schools by the teacher, it has been conceded ever since our schools were established, if in severity it does not exceed the nature and magnitude of the offence, and it is not inflicted in haste, or with malice on the part of the teacher. The case finds that the father of Wall had requested that he should be kept in school and made to repeat the Commandments, and that he should be punished severely if he refused. It was not

necessary that the father should give his consent for the inflicting of reasonable punishment, neither can the teacher justify an excessive punishment by authority from the father. The parent cannot delegate a power that he does not possess, and as he could not punish his child severely without a sufficient cause, neither could the teacher do it without sufficient cause. The nature and extent of the punishment have already been considered. It now becomes necessary to look at the provocation.

The mind and the will of Wall had been prepared for insurbordination and revolt by his father and the priest. His refusal to obey the commands of the school was deliberate. His offence became the more aggravated by reason of many others acting in concert with him, to put down the authority of the school. The extent of the punishment was left as it were to his own choice. From the first blow that fell upon his hands from the master's rattan, to the last that was given, it was in his power to make every one the last.

He was punished for insurbordination, and a determination to stand out against the lawful commands of the school. Every blow given was for a continued resistance and a new offence. The offence and the punishment went hand in hand together. The punishment ceased when the offence ceased.

By this the court is not to be understood as justifying the inflicting of punishment upon a scholar so long as he holds out against the commands of the school. The punishment must not be extended beyond the limits of sound discretion, and this every master must decide at his peril. In this case the punishment inflicted, when compared with the offence committed, and all the attendant circumstances as they appeared upon the trial, was neither excessive, nor inflicted through malice by the defendant.

The defendant is discharged.